



California's protection and advocacy system

**LEGISLATION & PUBLIC
INFORMATION UNIT**

1029 J Street, Suite 150
Sacramento, CA 95814

Tel: (916) 497-0331

TTY: (916) 497-0835

Fax: (916) 497-0813

www.disabilityrightscalifornia.org

February 8, 2010

The Honorable Debra Bowen
Secretary of State of California
1500 11th Street, Sixth Floor
Sacramento, CA 95814
votingsystems@sos.ca.gov

RE: The Future of Voting in California: The People, the Equipment,
and the Costs

Dear Madam Secretary:

On behalf of Disability Rights California, we are providing you with additional comments to augment the comments we made during the public comment period at the February 8th public informational hearing "The Future of Voting in California: The People, the Equipment, and the Costs". Disability Rights California is an independent, non-profit, statewide organization mandated by the federal government to provide legal services to individuals with disabilities in California regarding their disability, civil and service rights. Disability Rights California is authorized under various federal statutes to ensure the protection and advocacy of Californians with disabilities and is the protection and advocacy system in California. Under the Help America Vote Act of 2002 (HAVA), Disability Rights California is charged with ensuring "the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places." 42 U.S.C. § 15461.

Eight years have passed since the Help America Vote Act (HAVA) became law but HAVA's promise of equal voting opportunities for people with disabilities has not been achieved in California.¹

As noted in the background materials for the hearing, counties in California either purchased new voting systems or modified existing systems using HAVA funds. However, state and county concern about federal and state law accessibility requirements, in our experience, remains a low priority. Based on our work in the community, individuals with all types of disabilities want to vote and want to cast their ballots at a poll site but continue to encounter barriers to doing so.

As we look at the future of voting in California it is important to remember that our goal is to ensure that every citizen of voting age is able to fully participate in the electoral process, including people with disabilities. This includes guaranteeing that all voters can exercise the right to cast a private ballot. Casting a private ballot is not a need that is special to voters with disabilities, but rather a need that all voters have. According to a fact sheet developed by Lisa Schur and Douglas Kruse of Rutgers University², the voter turnout rate for people with disabilities in California in the 2008 election was 8.1 percentage points lower than for people without disabilities, which is slightly lower than the national rate of 7 percentage points lower than for people without disabilities. HAVA has requirements designed to improve access to the electoral process for people with disabilities that we'd like to call your attention to.

Accessible Voting Systems

HAVA requires that each polling place have an accessible voting system so that voters with disabilities, including voters who are blind, can cast a

¹ Section 15481(a)(3)(A) requires is that each "voting system" be accessible to disabled persons in a manner that provides "the same opportunity" for access and participation that other voters have.

² http://www.eac.gov/News/docs/fact-sheet-on-disability-and-voter-turnout-in-2008-dr-schur.pdf/attachment_download/file

secret ballot by marking that ballot privately and independently. 42 U.S.C. § 15481. The entire process must be accessible, including marking, verifying and casting the ballot, in order to ensure that voters with different disabilities can vote privately and independently. Historically many voters with disabilities have been unable to vote by casting a secret ballot, because they cannot mark a ballot privately and independently, including people who are blind or visually impaired, voters who have manual dexterity disabilities, voters whose disabilities cause them to have limited range of motion and people who cannot read due to their disabilities, or due to an effect of disability-related medications.

To that end California must have a consistent standard for evaluating the accessibility of voting systems. Testing agents must understand the diverse needs of voters with disabilities and have experience and knowledge with assistive technology. If a paper ballot is involved with a voting system, the paper must be fully accessible so that voters who are blind or who have reading related disabilities, and voters who have limited or no use of their hands can vote without touching or handling the paper. Voting independently and privately means being able to vote without relying on poll workers or others to complete the voting process.

Vote by Mail and Compliance with HAVA and State Law

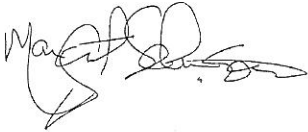
For some voters with disabilities, vote by mail ballots allow the voter to cast a secret ballot by marking that ballot privately and independently. For many voters with disabilities, vote by mail ballots prohibit them from marking their ballots privately and without the help of another person. This includes voters who are blind or visually impaired, have manual dexterity disabilities, whose disabilities limit their range of motion, or cannot read due to a disability, or due to effects of disability-related medication. Currently California allows voters to choose to vote by mail. This allows those who find voting by mail to be most accessible - to vote by mail - and those who find voting at a polling place to be most accessible - to vote at a polling place.

Were California as a whole to move to only vote by mail, or if counties designate precincts as vote by mail only precinct, there would be many voters with disabilities who could no longer vote privately and

independently. Such a result would contradict HAVA's voting system accessibility mandate and California's obligation to promote full participation in the electoral process.³ Thus steps to increase the use of vote by mail ballots should include an in depth analysis of the types of mitigating measures needed to ensure these voters are not disenfranchised or forced to vote so that their vote is known to others and that assistance is required to vote.

Thank you for the opportunity to provide input and feel free to contact us if you have any questions about our comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Margaret Johnson', with a stylized, flowing script.

Margaret Johnson
Advocacy Director

Lori Shepherd
Collaborative Projects Director

A handwritten signature in black ink, appearing to read 'Hillary Sklar', with a long, horizontal, sweeping line extending to the right.

Hillary Sklar
Attorney

³ 42 U.S.C. §15481; California Elections Code sections §§2052, 19225(e) and 19225(f).